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AN IMPARTIAL OPINION

ON

THE ALABAMA QUESTION,

AND

THE MANNER OF SETTLING IT.

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AN IMPARTIAL OPINION ON THE ALABAMA QUESTION AND THE MANNER OF SETTLING IT.

I. PRELIMINARY REMARKS.

I have several times been requested, by various parties, to draw up an impartial opinion touching the Anglo-American dispute known as the "Alabama question." I have long hesitated to comply with this request partly on account of the difficulty of the task and the insufficiency of my own information, and partly for fear of not being able to fully meet the expectations of my friends. If I finally undertake publicly to express my view of the case, I by no means claim to pronounce a decisive judgment. All that I desire is to contribute to the enlightenment of public opinion, and I should be happy if the opinion which I propose to express could hasten, in some measure, the peaceable settlement of the dispute.

The fear of seeing the Alabama question become a cause of war between the two powers has doubtless long since disappeared. We are far from those times when any unsettled dispute between states was inevitably followed by war. Modern nations begin by examining whether war is a means proportioned to the right which they intend to maintain, and they abstain from this perilous remedy as soon as they reach the conviction that it will be much easier for them to support, for some time longer, the suspension of the disputed right than to submit at once to the sacrifices and the evils which are inseparable from war. Nevertheless, the continued existence of this difference constitutes not only a permanent danger for the two nations, on account of the possibility that, other sources of discord arising, they may finally appeal to arms: it is, moreover, a permanent menace to the entire civilized world, and particularly to the commerce of all nations, for their security in time of war is interested in having the Alabama question justly settled.

The United States are in the habit of remaining neutral in European wars. But let us suppose that, the Alabama question being still unsettled, a war breaks out between England and Russia. Would not the interests of navigation and maritime commerce be seriously threatened, if the United States, although remaining neutral, allowed the Russians to fit out privateers like the Alabama in America, and to infest the seas with them? If, in general, neutral states are not obliged seriously to hinder the arming of privateers in their ports, do not all nations engaged in maritime commerce run the same risk, as soon as their enemies succeed in inducing neutral builders, through a desire of gain, to fit out privateers?

The general tendency of modern international law is to protect and guarantee, as far as possible, in time of war, private property and activity. It is therefore by no means unimportant to know how the serious damage is regarded, which American maritime commerce suffered during the civil war in America. The effect of the settlement of the Alabama question will be either greatly to strengthen, or notably to weaken, this guarantee of private right.

II. RECOGNITION OF THE SOUTHERN CONFEDERACY AS A BELLIGERENT POWER.

When Senator Sumner, of Massachusetts, delivered, on the 13th of February, 1869, in the Senate at Washington, the speech which decided the fate of the convention agreed upon by the American ambassador at London, Reverdy Johnson, and the English minister of foreign affairs, Lord Clarendon, in order to put an end to the Alabama dispute, the principal fault which he found with this convention was that it had treated a great question of national interest like a mere question of money; that it had left unconsidered the most serious grievances of the American people, only to busy itself with the individual claims of a few ship-owners and merchants. He forcibly set forth the national grievances of the Union against Great Britain.

The first complaint which he makes against the British government is that it treacherously recognized the States of the South as a belligerent power, scarcely one month after the bombardment of Fort Sumter, and that it thus paved the way for new acts of injustice. Without this recognition, no privateer could have been built in England by the "rebels;" it would have been an act of "piracy."

Let us see whether this accusation is justified.

It is notorious that neither England nor France *ever* recognized the southern confederacy as a *new state*. The cabinets of the two countries may have desired to see the American Union torn into two political groups, and to see the menacing preponderance of the great confederation broken; but they carefully refrained from a premature recognition of the confederacy as a political body definitively separated from the Union of the North. Subsequent events have proved how well founded this circumspection was.

The powers of Europe certainly did, however, early recognize the Southern States as belligerents. Was this wrong?

It certainly is necessary to distinguish between the *political* side and the *juridical* side of the recognition. In the eyes of the American patriot, the maintenance of the Union constituted for his nation a vital interest of the first order; the rising of the Southern States and their efforts to declare themselves independent must therefore have seemed to him a culpable rebellion, which it was necessary to put down by force, at any price. It is therefore easy to understand that he was painfully affected by the recognition, and that he considered it as a hostile proceeding on the part of a foreign government which had been friendly up to that time. As in fact the consequence of this necessarily was to lay difficulties in the way of the policy of the Union, and to favor that of secession, it was natural for him to consider it as an intentional service rendered to the latter. It is also possible that a certain sympathy of the statesmen of England with the States of the South, and the secret hope of seeing the two belligerent powers perpetuate themselves as two distinct states, contributed to precipitate the recognition. Confidence in the stability of the Union may have been shaken in certain regions, and the conviction of its necessity may have been wanting. All this has nothing to do with the question whether the recognition of the Southern States as a belligerent power was or not a violation of international law. Even if it were fully demonstrated that this act was a *political fault* on the part of the English statesmen, it would by no means follow that it was an act of *injustice*.

Each state has the right freely to shape its political conduct toward other states, in accordance with its own notions and its own interests;

it must only abstain from attacking that which constitutes the common right of all nations. A policy varies according to the point of view in which it is placed, and the object which it seeks to gain; law is invariable, and binds all parties alike. Hence it is that the political conduct of a government renders it indeed responsible to the people under it, but not to foreign states, whilst in international law it must give an account to the latter for any injustice committed by it against them.

In all cases it belongs to law to decide on what conditions a party having recourse to arms may be recognized as a belligerent party. War constitutes always, and before everything else, a fact; but every armed contest, even if organized on a military footing, is not a war. When, in southern Italy, brigands appear in armed bands, regularly commanded, and offer battle to the government troops, they do not therefore form a belligerent party, but only bands of malefactors. The distinction is that war is a political contest, entered into for political ends. Now brigands neither aspire to defend the existing political law, nor to form a new one; they only obey the guilty desire of getting possession of the persons and property of others. They are therefore amenable to the criminal courts. The law of nations has nothing to do with them.

It is otherwise when in a state a large party of citizens or subjects, convinced of the necessity of a revolution, or of the justice of its claims, take up arms, organize themselves on a military footing, and array regular troops against the troops of the government. The latter, (*i. e.* the government,) it is true, will seek here also, as long as possible, to suppress the rising by the application of its penal laws; it will try to put down the insurgents as "rebels," or as "guilty of high treason," and to cause them to be punished by its courts.

But the great march of the history of the world and the decrees of divine justice which are therein revealed have long since proved, with irresistible evidence, how impracticable and foolish is this manner of viewing the great revolutions of Europe with penal code in hand. An armed struggle of great political parties may assume such dimensions that the narrow frame of repressive justice will be everywhere overflowed or broken. The only thing to be done, then, is to place one's self in the point of view, not of criminal procedure, but of public law and the law of nations.

Moreover, the party in revolt which operates with army corps organized on a military footing, and which undertakes to cause its political programme to triumph by war, acts, even when it does not form a state, at least as if it did constitute one in the place of a state, (*an Staates Statt.*) It affirms the justice of its cause and the legitimacy of its mission with as much good faith as is presumed to exist in any belligerent state. It is not composed of a parcel of criminal conspirators, but it appears as a hostile national force, analogous in all points to a hostile foreign state. For this reason its troops are under the protection of international law. The history of all nations shows that these revolting parties have often succeeded, either in founding a new state, or in permanently overcoming the sovereign power in the state of which they formed a part. We cannot therefore deny to parties which are so powerful and so well armed, the possible capability of constituting new states. Now, it is precisely upon this that rests the juridical possibility of considering them as real belligerents.

It is certainly a great step in advance for civilization to have recently caused the rigorous application of penal laws to yield more and more, in such cases, to the more humane application of international law. The result has been that civil wars, formerly so full of horrors, have become

milder in an equal proportion. As long as the officers and soldiers of the rebel army have to fear, if they are made prisoners, being incarcerated as state criminals, or being punished with death, they will infallibly be led to take vengeance, by way of reprisals, on the prisoners taken by them in their turn from among the troops of the government, and to put them to death likewise.

The civil war which broke out in Spain after the Carlist insurrection, about the year 1840, furnishes a terrible and still recent instance of two armed parties vying with each other in savage cruelties. If, on the contrary, the insurgent troops are assured that the enemies against whom they are carrying on an irregular war will not pursue them, and will not punish them as criminals, but will treat them as enemies, in accordance with the rules of international law adopted by civilized nations; if they know that, in case of a reverse, they will have to suffer the fate of prisoners of war, but not of malefactors; they will then likewise conform to international law, if they are victorious, and will abstain from all useless barbarity.

To this is joined a second consideration. When so many men, and among them so many esteemed and honorable citizens, take part in the movement; when, with one accord, a whole population rushes to arms, in this case the punishment of the whole becomes an impossibility, and the punishment of a few seems but a cruel inconsistency. If the conquering power listens never so little to the counsels of justice, it is reluctant to act as a criminal judge, and becomes persuaded that, in a struggle undertaken on such a scale, it is in measures of policy and not in penal repression that the remedy for the existing evil must be sought.

It is principally by these practical motives that the notion of belligerency, and consequently the application of the law of nations, as opposed to penal law, instead of being limited to two foreign states at war with each other, has been extended to an integral part of the population of a state, which (*a*) is organized *de facto* as a military force; (*b*) observes the laws of war in the conduct of hostilities, and (*c*) thinks in good faith that it is fighting as a state in defense of its public right.

When the American colonies took up arms to gain their independence, the King and Parliament of Great Britain commenced by calling them rebels, and a considerable time passed before the English generals recognized the American militia as troops of a belligerent power, that is, as honorable enemies. It is remembered how Lord Howe at first refused the title of general to Washington, although he desired to negotiate with him, and how proudly the great general repelled the claim of his adversary to treat him as a private individual, when he commanded the armies of his country. It is also remembered how the American General Lee, who was taken prisoner by the English troops in 1776, was at first treated as a criminal prisoner, until the efforts of Washington and his threats of reprisals induced the hostile general to treat Lee as a prisoner of war.* Still, in the course of the war of independence, the English decided to relax their rigor and to treat their enemies as a belligerent power.

Let it not be said that the great difference consists in the fact that the American colonies were then fighting for their liberty against English tyranny, while the Southern States were fighting for slavery against the support of the Union. It was not possible to require at once from the English that they should recognize, without difficulty, the right of the

* Cf. Phillimore, International Law, III, p. 150. This author cites other similar conflicts which arose during the war of American independence.

colonies arbitrarily to break the political bonds which united them to the mother country, and to shake off the authority of the King and of Parliament. But neither was it possible to doubt that the Southern States believed, in good faith, that they had a right to fight for their independence, their property, and their most important interests. The opinions of the belligerent parties with regard to their rights are usually very divergent, and most frequently absolutely contradictory. What one party proclaims as its sacred right, is in the eyes of the other but a scandalous iniquity. It is for this very reason that the applicability of international military law depends in no wise upon the greater or less foundation of the claims of each party. During the war it is admitted, in the interest of humanity, that both parties act in good faith in defense of their pretended rights. The question of right in dispute is only decided by the issue of the war, in the treaty of peace. But until that moment, each of the two parties may claim to be treated as a governmental party, according to the reciprocally obligatory rules of the law of nations.

The conditions which, according to the statement which we have just made, should jointly exist in order that an insurgent party may legitimately aspire to be recognized as a belligerent, were all united in the Southern States. In fact:

a. They had long been *organized as States*, having their own legislation, government, and administration. And now they had joined in a *confederation*, like the Union itself, with a president at their head, and all the organic apparatus of a complete state. This was not, therefore, a band of insurgents arbitrarily collected, but a regular governmental power, struggling for its existence against the old Government of the Union. Whether the confederacy was rightly or wrongly formed, in both cases it presented itself under the exterior of a regularly constituted state, and that is sufficient according to international law.

b. The confederacy possessed a completely organized *army*, which was commanded by generals who disputed victory with the generals and army of the Union. The war was conducted according to military principles and usages. The army of the Union was not a mere troop of execution, charged with the repression of a disorderly rising, but an army which had regularly taken the field, and which was obliged to fight pitched battles with an army similarly situated, and to use all its force in order to conquer it. It was the greatest—the most gigantic—civil war mentioned in the annals of the world.

The Union very naturally thought itself authorized to qualify the Southern States as "rebels," and to reserve to itself the right of punishing their leaders after the victory. According to the juridical sentiment of the North, these leaders had wickedly attacked the common country, the Constitution of the Union and the general prosperity. The issue of the civil war has shown, however, to the satisfaction of all impartial minds, that the Government of the Union renounced the criminal prosecution of the conquered, contenting itself with a political reconstruction. Even the president of the southern confederacy, Jefferson Davis, finally escaped all punishment. And such was not only the view of President Johnson after the close of the war, but also of President Lincoln during the prevalence of hostilities.

As long as the civil war lasted the soldiers of the South who were taken prisoners were always treated as *prisoners of war*, and not as criminals, and the rules of penal law were not applied, but the principles of international military law. The celebrated articles of war drawn up by Professor Lieber, and which President Lincoln gave to the Army

as instructions which were to be obeyed, were wholly based upon this fundamental idea, that the war in question was one conducted according to the law of nations, and that the fight was against a regular hostile army.

When President Lincoln caused all the ports of the South to be declared in a state of blockade, there was nothing exceptional in this measure, and the expression *blockade*, used by him, is perfectly correct. The measure in question was one of effective war and military restraint. It was necessary, by the blockade of the ports of the South, to prevent the enemy from relying upon the ocean in order to carry on his warlike operations, and it was, at the same time, necessary to deal Southern commerce a severe blow by intercepting exportation, particularly that of cotton, as well as the importation of the goods which it needed. The blockade was connected with the other measures of military restraint which the North used against the South, in order to force it to submit to the Union. Precisely because the civil war had broken out it had not the character of a peaceful blockade, but that of a blockade undertaken as it would be against any other hostile power. It constituted, therefore, a kind of implied avowal, on the part of the North, that it was really at war with the South.

The blockade of the Southern ports affected not only the inhabitants of the Southern States, that is, the enemy's country, but also the commerce of neutral states. Neutral vessels could neither enter nor leave Southern ports. If they undertook to do so, they ran the risk of being captured and condemned by a United States prize court. This really took place. American prize courts condemned neutral vessels. Now such rigor was only possible in virtue of the law of war, and not of the law of peace.

Moreover, the American war navy exercised the right of search on board of neutral vessels, *as it is only permitted in time of war*. The Supreme Court of the United States had to examine whether President Lincoln could, without being authorized to do so by law, order the blockade and the seizure of the enemy's property at sea, in order to exercise the right of making prizes. The majority decided the question in the affirmative. But *all* the judges of the Supreme Court were unanimous in admitting that this was nothing but the application of the international law of war to a civil war.*

The instances of peaceable blockades given by Senator Sumner are of a totally different nature. A peaceable blockade is a forced closing of hostile ports, without war, and not "without maritime war," as Mr. Sumner says. When, in the last war of France and England against Russia, it was decided to blockade all the ports of this latter country, there was no naval combat between the hostile powers, since the Russian vessels did not dare to venture out to sea. No one doubted, however, that this blockade was an ordinary war blockade. It is precisely the advantage of the strongest maritime power to hinder the other from occupying the sea, and to confine it to the land by means of a blockade.

Moreover, "peaceable blockades," as well as others, are only practiced against a foreign state, or at least against a power which acts, *de facto*, as a distinct state, but never against the sea-ports of the power itself which makes the blockade. Thus, even if it were necessary to consider the Lincoln blockade as a peaceable blockade, which is, at all events,

* Cf. Dana, Commentary on Wheaton, International Law. Obs. 153, 296. Various opinions of contemporary statesmen and jurists concerning the competency of the President or of Congress have been collected by W. B. Lawrence. Obs. 170 on Wheaton, iv, 155.

at variance with the manner in which military operations were conducted at that time, this expression would still imply the acknowledgment that the Union had to fight against a politically organized adversary.

c. Nor can the good faith of the Southern States be contested, with regard to their pretended political right.

There had for many years existed a party in America which considered the autonomy of the individual States, in opposition to the sovereignty of the Union, as the most important interest which they had to defend; another party, on the contrary, maintained the indivisibility of the Union above all things. The individual policy had its principal supporters in the South, the national policy had its most zealous partisans in the North. The civil war resulted in the triumph of the latter. The Union came out of the struggle more powerful and more compact than before. But, in waiting for the settlement of this matter, which belongs to the history of the world, it was very possible for certain States to sustain in good faith the opposite opinion.

The Southern States sought, moreover, to maintain the institution of slavery, and to shield it from the increasing attacks of the inhabitants of the North. Slavery is, without doubt, directly opposed to natural right, and is unworthy of a free nation. But however abominable it may be, it is not possible to deny that slavery exisited legally at that time, and that it was protected as a positive right in the Southern States. The Union itself had recognized it as such in a series of legislative enactments. It was, therefore, at least comprehensible that white masters should defend their claims to the ownership of their colored slaves. The South was fighting for the historical right, while the North was combatting for the natural right of humanity. But a contest of this kind between two parties is in reality a great juridical contest.

Finally, the South, whose industry consisted mainly in the cultivation of the soil, and whose principal wealth consisted of natural products, was commercially interested in having low customs tariffs, while the North, where manufacturing was more general, desired the imposition of high duties on products of foreign manufacture. It was equally possible to enter, in good faith, upon the discussion of these opposing interests.

If we keep all these considerations in view, we must reach the following conclusion, viz: That, considering impartially, as it appeared to the states of Europe, in presence of the situation which the facts created, the contest between the Union and the confederacy, that is to say, between the North and the South, it was absolutely impossible not to admit that the United States were then engaged in a great civil war in which both parties had the character of politically and militarily organized powers, making war against one another in the manner recognized by the law of nations as regular, and animated with an equal confidence in their right. One side had more sympathy for the Union, which had for them all the superiority of a recognized state and of a constitutional authority; others prayed for the success of the confederation, which was not yet recognized as a new federal state but which hoped to gain a separate existence for itself. Every one agreed that there was a war, and that in this war there were two *belligerent parties.*

This is all that the cabinets of France and England presumed in recognizing the confederation *as being in fact a belligerent power.* I can in no way see any injustice in this, nor any violation, to the detriment of the Union, of the practiced law. That the declaration was made a little sooner or a little later is a question of policy, not law. In making

it in this sense there is nothing to be seen but the *legitimate expression of the opinion of a third and disinterested state.*

III. SCIENTIFIC OPINIONS ON CIVIL WAR.

Modern practice.

In order to complete the preceding explanation, let us recall the words of a few authors who have written on the subject of international law. This examination will show that the ancient theory, which refused to recognize rebels as true belligerents, has insensibly given way to the opposite principle, which is more humane and more liberal.

Hugo Grotius does not favor the insurgent party. Although he calls their struggle against the existing power *bellum*, (war,) he nevertheless does not see that it is a true *bellum publicum*, such as would exist between two different states. He considers it a *bellum mixtum*, that is to say, as a war which is *bellum publicum* on the part of the power itself, but which is only a *bellum privatum* illicit on the part of the insurgents.* It is true that he neglects to deduce the consequences. Perhaps the remembrance of the cruelties of the Duke of Alba, who, by the help of the executioner, in vain attempted to bring the Netherlands to obedience, prevented him from taking up the defense of penal repression. But such is the inevitable logical consequence of the principle proposed by him.

Vattel expresses himself in a much more humane and liberal manner on this point as on many others. He distinguishes between "the popular emotion," "the sedition," and the "insurrection" of civil war. He rightly admits that at the commencement, as long as only an unimportant fraction of the population takes part in the movement, penal law should be applied; but even in this case he recommends governments to conscientiously examine the motives of the popular discontentment to try and remedy them, and to exercise indulgence toward the misguided subjects. (III, 18, pp. 287–291.) But when the insurgents fight for their rights, (even when this is only problematical,) and when their numbers have increased until they form a real military force, there exists, in his eyes, a *civil war*, and it is still such even when they are entirely in the wrong and the Government is in the right. "The Prince does not fail to call all subjects who resist him openly *rebels;* but when they become strong enough to oppose him, *to oblige him to make war regularly*, he must make up his mind to the expression, civil war."—(*Ibid.*, sections 293, 294.)

Phillimore does not especially examine the question of the existence of the parties, enemies of each other, in civil war. But in speaking of the Anglo-American war of 1776–1783, he approves the more humane practice which consists in treating the insurgents as belligerents. He enlarges (Vol. III, p. 229 *et seq.*) on the conscientious manner in which the English government observed its neutral duties in the civil war in Portugal, 1828–'29. The case is as follows:

Don Pedro, Emperor of Brazil, had renounced the crown of Portugal in favor of his daughter, Doña Maria II. She was recognized as the legitimate sovereign of Portugal by the European powers, and particularly by Great Britain. But Don Pedro's brother, Don Miguel, supported by the "absolute" party, disputed her succession to the crown, causing a civil war. Although the English government rightly looked

*De jure belli ac pacis, l III, t. 1; et l IV, t. 19.

upon Don Miguel as a usurper and upon Doña Maria as the queen, nevertheless, as soon as the hostilities had taken the character of a true civil war, it declared that it would preserve *neutrality between the two belligerents.* It ordered the partisans of the Queen who had sought refuge in England to leave, and did not allow them to make English territory a place of departure for military expeditions. When an expedition of this nature was prepared under the command of the Portuguese Count Saldanha, and sailed from Plymouth to Terceira upon four merchant vessels, the simple suspicion that the object of this enterprise was to make a descent upon Portugal was enough to determine the English government to oppose it by force. The government sent Captain Walpole, with some English war vesssels, in pursuit of the Portuguese ships, in order to prevent them from landing, even at the island of Terceira, which remained faithful to the Queen, and forced them to renounce every attempt at a descent on Portuguese soil. It is true that the conduct of the government was criticised in the English Parliament by several orators, among them Dr. Phillimore himself, because in the attack in the open sea—then in the waters of a foreign sovereign state with which Great Britain was in friendly relations—on unarmed vessels and their passengers, they saw an attack on foreign sovereignty and an unjustifiable usurpation. Nevertheless, the two houses of Parliament approved the action of the government by a large majority, being convinced that it intended to observe the duties of neutrality in their widest sense.

H. Wheaton also admits, in a very positive manner, in his *Elements of International Law* (IV, 1, § 7) that the parties struggling in civil war are true belligerents. "A civil war between different members of the same society is what Grotius calls a *mixed war;* it is, according to him, public on the side of the established government, and private on the part of the people who resist its authority. But the general usage of nations looks upon such a war as giving to *each of the two* opposing parties *all the rights of war as regards one another, and even in relation to neutral nations.*"* Wheaton's commentators, in their turn, support the same opinion in their notes. *W. B. Lawrence* (Obs. 171) also makes use of the authority of two Spanish authors, *Riquelme, Elementos de Derecho publico*, C, XIV, and *Bello Principios de Derecho intern*, C, 10, which also declare that insurgent parties, having a military organization, should be considered as belligerents by virtue of international law. He observes, also, that the public law of England permits the criminal prosecution of the chief for treason, when the crime has been committed not only against the king *de jure*, but even against the king *de facto.*

R. H. Dana (Obs. 158) remarks also in support of the same principle that the military authorities, as well as the political government of the Union, considered and treated the rebels of the Southern States as a belligerent party, and that the isolated judicial condemnations which, contrary to this principle, pronounced an application of the penalties have never been put into execution.

Heffter (*Völkerr*, II, p. 114) who rejects in principle the application of the laws of war to internal events, nevertheless acknowledges that a war between political parties of the same state may, under the umpire of *necessity* (*als Nothkrieg*) take the character of regular war.

Bluntschli (*Das moderne Völkerrecht*, p. 512) recognizes the military force which has organized itself as a belligerent power when, "in the same manner as a distinct State, (*an States Statt,*) it fights in good faith

* 5 Wheaton, 4me., French edition, 1864; t. i, p. 278.

for the defense of its political right;" and, although he considers the (p. 514) war between the Union, or the Federal Government on one side, and the different opposing States on the other, as a war of execution (*Executionskrvig*) and not as a war, properly speaking, according to the law of nations; he is of the opinion that in this case the modern law of nations in the interest of humanity "looks upon the two parties as belligerents."

Lastly, the most recent writer on international law, *F. Von Hottzendorff*, (*Encyclop. der Rechtswiss*, I, p. 807,) says: "At the end of the Middle Ages we find as subject to the laws of war states only, or, *in civil war, the part* which seized arms with the avowed purpose of separating itself and of forming a fraction of the territory into an independent State* when, after having withdrawn itself from the prower of repression of penal law, it appears strong enough to sustain a regular fight, observing all the laws of war. An insurgent party which finds itself in this condition may be considered by *neutrals* as a *belligerent force*, and by anticipation, to some extent, the definite organization to which it aspires.

IV. NEUTRALITY OF ENGLAND.

In his speech Mr. Sumner also criticises the qualification of neutral state given to Great Britain. The neutrality of the third state has, according to him, no meaning except when a war arises between two other States regularly constituted and independent, and in which the neutral States take no part. But there can be no question of neutrality when one only of the parties at war is a recognized state, while the other consists of a horde of rebels. Here the parties are in unequal positions, and the declaration of neutrality, aside from the principle involved, is only an act tending to favor the rebels, and to attribute to them an equality of rights which they did not possess before.

In the first place neutrality is a negative conception. It signifies *non-participation* in the war. Every war presupposes at least two combatting parties. All states which do not belong to one or the other of these parties are neutral. (*Qui neutrarum partium sunt*, as Grotius observed.) The general rule is that war only takes place between independent and recognized states which, in this respect, are on the same level. But in civil war, where there is no equality between the parties relative to their acknowledgment as states, we also encounter belligerent parties who, in this quality, should be placed on the same footing, both in a military point of view and in that which concerns the laws of war. The third pacific power, which does not express itself for either belligerent, and takes no part in the war, is necessarily, by that alone, a neutral power. The natural conditions of neutrality are: War and the existence of belligerent parties, in opposition to whom the neutral states affirm and defend, as far as possible, the laws arising for them from their pacific position. Every war compromises the interests of the neutrals also, even although these are not at fault. The troubles and disasters which war brings do not affect the belligerent parties alone. But, at least, it is to be wished that they should be confined within narrow limits, and that the rights and interests of peaceful nations should be protected as far as possible, even during a war carried on by other nations. The declaration of neutrality and the support of it by states which take no part

* These conclusions are not the only ones which can be proposed in the case of a civil war, but they suffice for the solution of the question which we are now examining.

in the hostilities, and which, by that alone, are neutral, have precisely this protection in view. Besides, it is incontestable that the declaration of neutrality made by a third state, in opposition to the two parties engaged in civil war, profits more to the insurgent party than to the party in possession of the recognized government, already admitted into international law as a political individual. The former is henceforward recognized in international law, not, it is true, as a new State, but, at least, as a real belligerent, making war as a state exercising international attributes and assuming international obligations.

We must, nevertheless, not lose sight of the fact that the declaration of neutrality has in no manner the sense of a mark of favor given to the insurgent party, but is simply the consequence of the fact that, without the concurrence, without the participation of the neutral states, *there exists a true civil war between two belligerent forces.* When an insurgent party has become strong enough to be no longer looked upon as simply a band of rebels, no matter how worthy of condemnation according to the historical law and constitution of the country their conduct may be, but when it presents itself as a belligerent power, the simultaneous consequences of this act are:

1. The constitutional party, invested with legitimate power, should treat the other as a belligerent.

2. The other states are neutral powers as regards the two parties. As, in the internal laws, the laws of war take the place of penal law, so, in international law, the laws of neutrality rule.

It is a remarkable historical fact that the first declaration of armed neutrality in 1780 should have taken place during the Anglo-American war. From the English standpoint this was also a civil war. As no state but France had, as yet, recognized the revolted colonies as a new state, the war had, in the eyes of the other neutral states, also the character of a civil war; in fact, France and Spain had also entered into war with England. In all these cases America was the principal theater of war, and the neutral powers, Russia, Prussia, Austria, Portugal, &c., were clearly understood to apply their declaration of neutrality to the American colonies, or, as they then presented themselves in fact, to the United States of America, for the assemblage of neutral powers recognized in them a belligerent power, if not a new definitely established state. From then on there existed a neutrality of European states, not only in respect to the two foreign independent states, but also in regard to the two parties engaged in a civil war.

V. VIOLATION OF THE DUTIES OF A NEUTRAL STATE BY THE ENGLISH GOVERNMENT IN ARMING THE ALABAMA.

The principal cause of complaint of the United States against Great Britain relates to the fitting out of the southern privateer Alabama on English territory.

The alleged facts supporting this grievance are stated as follows in Mr. Sumner's speech:

1. While the vessel was still in dock at Liverpool, it was known that she was destined for a southern privateer in the American war. Although the American ambassador at London and the American consul at Liverpool had every day represented this danger to the English government and authorities; although they had demanded the seizure of the privateer, it, nevertheless, was allowed to sail without being disturbed. The order to stop it did not reach Liverpool until it was too late.

2. The southern privateer, after its departure, took refuge in a port in Wales called Moelfra Bay, which is but little known; it staid for thirty-six hours in English territory, from half past six o'clock p. m. on the 29th of July, 1862, to three o'clock a. m. on the 31st of July. During this time the Alabama received her crew, brought to her by the steamer Hercules, which left Liverpool at the same time with her. All this took place without hinderance on the part of the English authorities, although the crew and armament of the vessel indicated, beyond a doubt, that she was destined for warlike purposes.

3. Later the southern privateer, whose escape was, according to the English minister, Lord Russell, "a scandal," came more than once within range of English vessels of war, and without their making any effort to seize her. She was several times received in English ports without the English maritime authorities making any appearance of arresting her. In this manner she remained freely during six days in the English port of Kingston, Jamaica.

4. The Alabama was an English vessel by her origin, construction, armament, and crew. She was American, only in so far as she was commanded by a rebel commissioned by the government of the Southern States. In opposition to this, we have a friendly state, the Union; this was, therefore, an act of hostility on the part of England. What shows still more clearly the advantage gained by the constructor of the Alabama, is the attack, in the House of Commons, on Mr. Bright, who had expressed himself in favor of America.

5. The violation of the duties of a friendly state, of which England was guilty by the equipment of the Alabama, was the most important circumstance, but not the only one in which the disposition of the English government was revealed. There were several more southern cruisers of the same kind. The numerous blockade-runners who carried contraband of war had their origin and were owned in England. Wherever the troops of the Union took possession of places of the enemy, they found English arms and English cannon. All the facts thus alleged are not of the same importance. But several of them, taking them for avowed or proved, which it is not for us to judge of here, should certainly be considered as a violation of the duties of a neutral state.

The neutral state which wishes to guarantee its neutrality should abstain from aiding either of the belligerent parties in its war operations. It cannot allow one of the parties to organize military enterprises in any place upon its territory. It is obliged to watch carefully that no vessel of war be armed upon its territory, to be given over to one of the belligerent parties. (*Bluntschli, Modernes Vökenecht*, § 763.)

This duty is proclaimed by science, and arises as much from the idea of neutrality as from the relations which every state must necessarily assume to the other states with which it lives in peace and amity.

Neutrality is *non-participation* in the war. When the neutral state supports one of the belligerents, it takes part in the war in favor of the party which it supports, and from that time ceases to be neutral. The adversary is authorized to see an act of hostility in this participation. And this is not only true when the neutral state furnishes troops or vessels of war itself, but also when it furnishes one of the belligerents a *mediate* support in allowing troops or vessels of war to be sent to it from its own neutral territory *when it could prevent it.*

Everywhere where the laws of neutrality are in force, they restrain the limits of war and its disastrous consequences, and guarantee the blessings of peace. The duties of the *neutral* states to the *belligerents* are in substance *the same* as those of a friendly state toward other states in time of peace.

Nor can any state, in time of peace, allow aggressions against a friendly state to be organized in its territory. All are obliged to take care that their soil does not become the starting-point for any military enterprise directed against states with which they are on terms of peace.

These universal international duties are also consecrated in internal public law by English and American legislation. The English law of July 3, 1819, contains, on this subject, (Article 7,) the following provision: "And be it further enacted, that if any person within any part of the United Kingdom, or in any part of his Majesty's dominion beyond the seas, shall, without the leave and license of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavor to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or shore ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom his Majesty shall not then be at war. * * *"

This law prohibits incontestably all aid given in case of war, it mattering little whether the belligerent parties are recognized foreign states, usurpers of power, or revolted colonies or provinces. Therefore, the English government, in allowing, intentionally or by obvious neglect, when it could and should have prevented, the equipment of the Alabama, misunderstood at the same time an international duty in regard to the American Union and the prescriptions of a national law. For these reasons it is also, according to the rules of international law, responsible to the injured state.

It is well known that the English law is an imitation of the American law of 1818, upon neutrality, which only revised and reëstablished the previous law of 1794. This itself is precisely the question of the equipment of privateers in neutral territory for the benefit of a belligerent party, that gave the first impulse to this legislation. In 1793, England, being at that time at war with France, complained that at New York French privateers were equipped, in order to injure English commercial navigation. President Washington acted with great energy against this violation of neutrality, and, in spite of the sympathy of the American people with the French, in spite of the steps of the French ambassador, Genet, he caused the privateers to be seized. He, in the same manner, prevented the building, in Georgia, of a privateer destined to impede French navigation. On both sides he conscientiously and reasonably observed the duties of a neutral state, and afterwards induced Congress to regulate these duties by legislation.*

The liberal minister Canning invoked in the English Parliament, in 1823, this honorable attitude of Washington, in order to defend, on his side, the English neutrality law against the assaults of men influenced by political passion or selfish individuals.†

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* Bemis's American Neutrality, Boston, 1866, p. 77, seq.
† Phillimore, International Law, III, 217.

The opinion of the learned world and of the enlightened political world is unanimous in recognizing these principles, which the American people and the first President had the honor to proclaim before all others in clear and formal words of law.

VI. EXPLOITS OF SOUTHERN PRIVATEERS.

The activity of the privateer Alabama was to the highest degree fatal and disastrous; she destroyed numbers of American commercial vessels with their cargoes. The proceedings which she adopted to attain her ends were the more barbarous and pernicious as the ports of the belligerent party to which she belonged were blockaded, and applications for proceedings before prize tribunals were, therefore, impossible.

Modern naval warfare has kept pace in a certain sense, still less than continental war, with the progress of civilization and the principles of natural right. The first especially respects neither private property nor ships and goods of enemies, but considers them as good prizes; whilst the second knows more equitably how to distinguish public from private property, and it has definitively repulsed the ancient right of plunder as a barbarous institution, equivalent to brigandage.

The idea so natural that states make war on states and not on private persons, and that, in consequence, the object of the war is not to suspend private law, but only sometimes to restrict its application when necessity demands, this idea is, it is true, approved now, at least in principle, by different naval powers; but it has not yet, especially in consequence of the opposition of England, succeeded in making itself recognized in a general manner, either by treaty or by international practice.

But there is a danger graver than that with which war vessels threaten commercial vessels; it is that which arises from vessels armed as privateers. Captains and crews of men-of-war are called upon by their profession, and are even inclined by sentiments of military honor, to dispute victory with the enemy's naval force, rather than to chase inoffensive merchant vessels. Privateers, on the contrary, are nothing but privileged pirates, the crews of which, not animated by a sense of military honor, impelled by a selfish love of gain, take advantage of times of war to appropriate by force the property of strangers. It was therefore a step in advance made by civilization over barbarism, and of modern right over traditional iniquity, when, in the congress at Paris, in 1856, the European powers agreed to interdict privateering in naval wars.

The United States of America refused then to accede to this interdiction, for the reason that booty, taken at sea during naval wars, was not, at the same time, absolutely proscribed; but this refusal to accept what was good, based upon the fact that they could not yet procure what was better, had for the United States the most grave consequences. If they had then united in the interdiction of privateering, the arming of privateers would have been with difficulty attempted in England during the American civil war, for it would have been a public encouragement to piracy.

But the ruinous work of these privileged pirates certainly reached its height when a privateer was launched intended to destroy all private property belonging to the enemy which it could take at sea, and which threatened at the same time even the life of all peaceable persons of the commercial vessels of the enemy. To the danger of robbery was joined that of the destruction of valuable property, and even murder.

When a state, be it even by mere lack of vigilance, has made possible and tolerated the departure of such a privateer, to the prejudice of a friendly state, it is in all cases a grave fault for which the injured state is fully authorized to ask reparation.

The destruction of American vessels and their cargoes was, however, not the only real damage done by the Alabama and other privateers of the same kind. Another result, only indirect, and, as such, further off, but which weighs still more heavily in the balance, was the want of security of the whole American Navy, which produced a striking diminution of it. If it is incorrect to attribute exclusively to that cause the stagnation into which American ship-building fell, the sale of a considerable number of American vessels, and the perceptible retrograde movement of the entire commercial navigation of the United States, at the moment when that of England developed itself, it is not doubtful that the terror caused to American merchant vessels by Southern privateers was the principal reason for this national calamity. One may differ in opinion as to the extent and importance of this damage, but nobody will dispute that a war of rapine and destruction, undertaken by these cruisers upon the whole surface of the seas, inflicted profound injuries upon the American Navy and commercial navigation.

At all events, the third consequence mentioned by Mr. Sumner is still more indirect and remote. It speaks of the prolongation of the American war, and, in consequence of it, of the increase of sacrifices, already gigantic, of persons and property, produced by the civil war. The Southern privateers may have contributed to it in some way, but it will be very difficult to arbitrate what part of the evil should be imputed to them and what part to other causes. The correlation between this consequence and the causes of the destructive expeditions of the cruisers is, however, so vague and uncertain that it will not be easy to make of it a basis for a judiciary demand. It must, however, not be lost sight of that all these disastrous results are, in the main, imputable, not to the English government, but to the cruisers themselves. Nobody will accuse the English government of having given authority to destroy American merchant ships, or to have by its actions impeded or damaged the American Navy. That with which it may be reasonally reproached, on the supposition that the above-mentioned facts ought to be considered as acknowledged or proved, is not a fact, but an omission contrary to law. Its fault does not consist in having equipped and fitted out the cruisers, but in not having prevented their arming and their departure from its neutral territory. But this fault has but an indirect connection, and by no means a direct one with the depredations actually committed by the cruiser.

VII. PRIVATE CLAIMS FOR DAMAGES.

If we may believe several American orators and writers, it is understood that the government of Great Britain would be obliged to indemnify, at least, those private individuals whose property had been destroyed by the Alabama, (as also by the Florida and other southern cruisers.)

In my opinion, this point is far from being entirely evident, and one might be singularly mistaken in relying on the success reserved for these private claims before a court of arbitration.

If the Union does not take, as a state, these private claims under its protection, and if it does not make the satisfaction that the United States have a right to claim from Great Britain, to consist in their

equitable settlement, then the private individuals interested have decidedly no prospect of indemnification.

According to the ordinary rules of private right, their claims would be vain. They would nowhere find a judge who would condemn the English government to pay an indemnity.

It is known that the Roman written law, the principles of which are still recognized, according to Mr. Sumner, in modern international law—the Aquilian law—grants a general action for "dommages-intérêts,"* even on the ground of damage caused by neglect. In the principle, action *ex legi Aquilia* was only given in the case of a "*damnum corpore corpore datum ;*" that is to say, when, by material means, one had caused a material damage, (for instance, death, or wounds inflicted upon a slave, the destruction of an object.) The law decrees as follows, (cap. 3:) "Ceterarum rerum, præter hominem et pecudem occisos, si quis alteri *damnum faxit, quod usserit, fregerit, ruperit injuria,* quanti ea res erit-tantum æs domino dare damnas esto." (L. 27, § 5, Dig. ad legem Aq. ix, 2.)

The action was afterward extended further, and an *actio utilis ex lege Aquilia* was granted in another series of cases, where the damage had not been caused immediately by a material action, but by negligence connected with a positive act of the defendant; when, for instance, a surgeon had made a successful operation upon a slave, but had afterward neglected the patient, who died in consequence of want of medical treatment, or if any one, after having properly lighted a fire, imprudently fails to take care that it do not spread to the surrounding objects, so that the fire, left to itself, finally burns a neighbor's house; in this case, *l'actio legis Aquilia* is granted. (L. S. pr. ad leg. Aq.; L. 27, § 9, eod; § 5, 6, 1, eod.)

But one cannot admit that the Romans ever went so far as to grant the Aquilian action for injury resulting from a simple omission. (V. Vangerow, Pandekten, 7e éd. 1869, vol. III, p. 582.)

Winscheid (Pandektenrecht, 1866, vol. II, Abth. 2, p. 298) says also: "The damages must have been caused by a positive act; an omission obliges only so far as the action was commanded by a prior or simultaneous act." (Cf. L. 13, § 2, Dig. de usufr. VII, 1.)

Now, of what can the English government be accused, if it be not of a simple omission? The action of the Aquilian law is therefore not applicable to it.

Modern legislators consecrate in this matter principles conformable to the Roman law. (Preussisches Landrecht, I, 6, § 8 et ss.—Code civil, art. 1382 et ss.—Code Autrichien, § 1294 et ss.—Code de Zurich, § 1837.)

Blackstone (Comm. III, p. 218, seq.) restricts in the same manner the action based on the *nuisance.*

The non-admissibility of a private action on the ground of damage done to private property becomes still more evident if we consider the question whether the injured owners could effectively prosecute for damages either the builder or the persons who took an active part in the arming of the Alabama. I doubt whether any jurist will answer the question affirmatively, and yet the acts of these persons are much

* Domat, part i, book iii, tit. v. Nos. 1906 to 1913. No. 1904, "All the sorts of reparation of damage are reduced to two kinds, one which is called interests simply, and the other *dommages-intérêts.* Interest is the reparation or satisfaction which he who owes a sum of money is bound to make to his creditor for the damage which he does him by not paying him the money he owes him. All the other reparations of damage, of what nature soever the damage may be, are called *dommages-intérêts,* as if a tenant neglect to make the repairs, &c., and the house be thereby damaged. The same name of *dommages-intérêts* is given likewise to the reparations which are due from those who have caused any damage by a crime or injury."

more closely connected with the damage done by the privateers than the simple act of omission with which the government is reproached. The builder and the owners were able to foresee that the privateer built and armed by them would commit injurious operations; they were certainly responsible to their own government for this aid granted to a belligerent party, and they might have been brought before the courts in England, and punished for an infringement of the neutrality laws. But if the owners of the destroyed American vessels desired to prosecute the same persons for damages, they might reply: "We have confined ourselves to delivering an instrument of war to the belligerents of the South; we have made no injurious use of this instrument ourselves; we are therefore not responsible for damages which we have not committed; the belligerent party, which purchased the instrument, and which has used it as it has desired and thought proper, must be responsible for this use."

Then if it is not possible to oblige the constructor of the Alabama to pay indemnity, how much less can it be claimed from the government, which simply omitted to forbid the constructor from delivering his work.

Besides, what still more opposes such a demand of *dommages-intérêts* is the principle which is generally received in the laws of war, that the damages caused by belligerents in the course of the war can never become the foundation of private claims after hostilities are once terminated and peace concluded. Considerations founded on the inevitable disasters of war, as well as on the considerable interests of peace and the reëstablishment of juridical security, have caused it to be admitted that States cover damage caused during the war with the mantle of oblivion, and tolerate no more retrospective claims on this ground. But if it is not possible to bring an action, after the conclusion of peace, against former enemies, who have directly and intentionally caused this damage, it is natural that an action should be still less admissible against neutrals, who have only favored this injury and contributed thereto in a manner which was at best indirect, perhaps even through simple negligence.

The injured American owners can therefore only expect redress if the Union itself, as a State, takes their cause in hand and transforms, at least partially, their *private claims* into a *national claim*, seeking the reparation which is due it, in the shape of an indemnity to its injured citizens.

VIII. OF THE CLAIMS OF THE UNION TO REDRESS.

According to the foregoing remarks, the whole question is summed up, not in a dispute between individuals who have suffered losses in consequence of the war, and the state of Great Britain, which it is sought to render responsible for the same; but in a dispute between the federation of the United States on one side and Great Britain on the other. That which forms the object of the dispute is no material damage, but the non-observance of the international duties by a friendly and neutral state.

It follows that satisfaction, whether demanded or offered, may be stipulated or granted, under very different forms

In the first phases of the negotiation, the points in question have been:

1. *A cession of territory* as reparation; and

2. The payment of a certain sum of money, the amount of which should be fixed, either in a general way and without regard to the

damages which might be justified, or according to the plan of a treaty of January 14, 1869, under the head of an indemnity granted to individuals.

Subsequently, in the discussion which took place in the Senate at Washington, the following propositions were expressly proposed:

3. A kind of satisfaction, according to which the conduct with which the English government had been reproached should be *recognized as contrary to law;* and

4. Redressed by a new affirmation of principles, designed to insure still further, for the future, respect for international law, and to guarantee the practice of justice in the civilized world.

It would perhaps be possible to find other forms of satisfaction, especially under the hypothesis of a reconciliation between the two powers.

But, if we come to treat the question judicially, and especially by way of arbitration, the first proposition—whose object is a cession of territory—should, in my opinion, be absolutely laid aside; for however great the English fault may be considered to have been, it has absolutely no kind of connection with a cession of English territory. No judge could condemn the state of Great Britain to detach a portion of its territory from the British empire, and to give it to the United States. The first proposition has, therefore, a possible sense, only if Great Britain *voluntarily* accepts such a mode of reconciliation, without being judicially compelled to do so, or if, after a war, in which she had been conquered by the Union, the latter made this a condition of peace.

The third proposition does not, indeed, present any difficulty, in a juridical point of view. On the contrary, if any redress is due, it is only on the supposition that the English government misunderstood its own duties and the rights of the Union. He who has violated right can and ought to confess it, or if he refuses, he should suffer an impartial judge publicly to denounce and to reproach him with his faults.

But this proposition presents a considerable *political* difficulty. A *formal admission* of guilt, however laudable it may be in the eyes of morality and justice, is always felt by the nation in fault as an act of unworthy weakness. This reason is of itself sufficient to prevent it from being asked of the government of a great power. A nation will much more readily consent to see its government repair the wrongs which it has done the aggrieved nation by means of a material indemnity whatsoever than to resign itself to a solemn "*pater peccavi.*" The renunciation of this third proposition is consequently commanded, not by motives of law, but by political considerations.

The true solution seems to me to consist in the combination of the second with the fourth proposition.

The second is not sufficient in itself alone, for it tends to reduce a great national question to the small dimensions of a pecuniary question. Private interests figure too much in the foreground, especially when the nature of the actual damage is calculated to make the reparation valued in money, while the interest of public and international law are, on the contrary, found thrown into the shade. That is the principal defect of the treaty of January 14, 1869.

But the fourth proposition, taken isolated, is not more satisfactory. Without doubt it answers the main point, in respect to the fact that the dignity of two great powers will not be sufficiently insured until they shall seek and find the basis of their agreement and reconciliation in the future harmony of the two nations, and of a kind to consolidate and augment the peace and prosperity of the civilized world. But to confine one's self to this *ideal* side of the question respecting the future, is

making too cheap the real injuries caused in the past. The very propounding of ideal rules seems feeble and uncertain so long as it cannot be interpreted by positive and substantial facts.

The *combination* of the two propositions has, on the contrary, the advantage of remedying, at least in part, the consequences of the error committed, and of strengthening for the future confidence in the law and in its power. It establishes a reparation for past wrongs and a guarantee of security for future law.

If, therefore, the two adverse powers made, either with or without the aid of an arbitrating tribunal, an arrangement, according to which—

1. They would expressly recognize, though in conciliating terms, the obligation incumbent on every state, friendly or neutral, not to allow its territory to be abused to make war upon another state; and,

2. Great Britain, considering she did not sufficiently observe neutrality, would declare herself ready to pay to the Union and to the damaged proprietors a just indemnity—

Such an arrangement would not only constitute a happy solution of a grave difficulty, but would contribute in the most useful manner toward confirming the progress of the law of nations as well as to the development of commercial and maritime relations.

IX. CONCLUSION.

Let us review, in a few propositions, the result of this investigation.

I. The recognition of the Southern States as a belligerent power, and the declaration of neutrality on the part of Great Britain and France, did not constitute a violation of international law. In deciding to act thus, the European states only exercised a right, whatever the serious reasons might be, independent of this, which could be advanced against the political occasion of this exercise.

The United States, therefore, are not authorized, however deplorable the results of this recognition may have been for them, to require that Great Britain or France shall grant them reparation or satisfaction, which could only be done if the law had been violated.

II. Supposing that the facts with which the English government is reproached respecting the armament of the Alabama, and her free exit from the English port, are substantially true, we have before us a culpable neglect of the duties of a neutral and friendly state toward the Union, and the latter has the right to demand satisfaction and reparation.

III. The owners of the American vessels and merchandise destroyed have no private action for damages against the British government, but the Government of the Union can watch and protect their interests in the arrangement of the difficulty pending with Great Britain.

IV. The right solution of the difficulty consists in the combination of a material reparation intended to indemnify the American owners, with a moral guarantee of the commercial and maritime relations against the return of similar injuries. The first of these objects will be attained by means of a just pecuniary indemnity, which Great Britain shall pay to the Union, to be divided among the damaged persons; the second will be attained by a fresh proclamation of the duty incumbent on neutral and friendly states to prevent, so far as possible, the abusing of their neutral territories for the organization of military expeditions.